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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,331	09/25/2003	John R. Weimer	1026.05US03	5692

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Patterson, Thunte, Skaar & Christensen, P.A.  
4800 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402-2100

EXAMINER

NORMAN, MARC E

ART UNIT PAPER NUMBER

3744

DATE MAILED: 05/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/671,331

Applicant(s)

WEIMER ET AL.

Examiner

Marc E. Norman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/25/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 10 and 16. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-5, 7, 9, and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Adams et al. (U.S. Patent 5,248,083).

As per claims 1 and 9, Adams et al. discloses an air control system/method comprising an environmental sensor (part of thermostat 70) detecting the temperature of an enclosed environment; a single controller 60 controlling the temperature and outputting first and second signals (Figure 1); vent air actuator 30 receiving one of the output signals; and combustion air actuator 10 receiving another one of the output signals, the controller operating the actuators to

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maintain the desired temperature range set by the thermostat (see column 3, lines 3-26; column 4, lines 27-29).

As per claims 3 and 11, Adams et al. further discloses the sensor being a temperature sensor (inherent in thermostat 70).

As per claims 4 and 12, Adams et al. discloses a communication interface (again inherent in thermostat 70).

As per claims 5 and 13, Adams et al. does not teach storing historical data into the controller memory. However, since the data is never functionally applied within the claim, it is simply non-functional descriptive matter and, as such, receives no patentable weight.

As per claims 7 and 14, Adams et al. teaches fan 10 being a variable speed fan.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Adams in view of Hollenbeck (U.S. Patent 5,616,995).

As per claim 6, Adams et al. does not specifically teach vent fan 30 being of variable speed. Hollenbeck teaches variable speed vent fan 114. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the variable speed fan of Hollenbeck to the system of Adams et al. for the purpose of more precisely controlling the flow volume of vented air.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Adams et al. in view of Ardiente.

As per claim 8, Adams et al. does not teach a manual override safety switch. However, such overrides are common and well-known in the field of furnace systems. Ardiente, for example, teaches a furnace system with coordinated combustion air and exhaust air control (via dampers 24 and 26) comprising a manual safety override (column 4, lines 5-9). It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply a manual override to the system of Adams et al. for the purpose of being able to control or stop the system in the case of a system malfunction.

Claims 2, 10, 15-18, 20 and 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adams et al. in view of Flanders.

As per claims 2 and 10, Adams et al. does not teach multiple appliances. However, multiple burner systems are common and well known in the art. Flanders et al., for example, teaches a multiple burner system, wherein the burners are controlled by a single controller (Figures 2 and 3). It would have been obvious to one of ordinary skill in the art at the time the

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invention was made to apply a multiple burners control arrangement such as that of Flanders et al. to the system of Adams et al. for the simple purpose of scaling up the capacity of the system, and for maintaining coordinated control of the burners.

As per claims 15 and 22, see discussions above of claims 1 and 9 regarding the combined combustion/vent control of Adams et al. and of claims 2 and 10 regarding controlling multiple burner appliances.

As per claims 16 and 23, see discussion of similar claims 3 and 11, above.

As per claims 17 and 24, see discussion of similar claims 4 and 12, above.

As per claims 18 and 25, see discussion of similar claims 5 and 13, above.

As per claims 20 and 26, see discussion of similar claims 7 and 14, above.

Claim 19 rejected under 35 U.S.C. 103(a) as being unpatentable over Adams et al. in view of Flanders et al. as applied to claim 15 above, and further in view of Hollenbeck.

As per claim 19, see discussion of similar claim 6, above.

Claim 21 rejected under 35 U.S.C. 103(a) as being unpatentable over Adams et al. in view of Flanders et al. as applied to claim 15 above, and further in view of Ardiente.

As per claim 21, see discussion of similar claim 8, above.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc E. Norman whose telephone number is 703-305-2711. The examiner can normally be reached on Mon.-Fri., 8:00-5:30, with first Fridays off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Denise Esquivel can be reached on 703-308-2597. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MN

A handwritten signature in black ink, appearing to read 'M. Norman', is positioned above the printed name.

**MARC NORMAN  
PRIMARY EXAMINER**